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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 JOSEPH TORRES, JR., Case No. 3:07-cv-00563-RCJ-RAM  
10 v. Petitioner,  
11 JIM BENEDETTI, et al., ORDER  
12 Respondents.  
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15 On October 10, 2008, this court dismissed Joseph Torres, Jr.'s *pro se* habeas  
16 corpus petition with prejudice as untimely, and judgment was entered (ECF Nos. 19,  
17 20). Torres filed a notice of appeal, and the Ninth Circuit Court of Appeals denied a  
18 certificate of appealability (ECF Nos. 21, 29). On June 16, 2010, the United States  
19 Supreme Court denied Torres' petition for a writ of certiorari (ECF No. 30).

20 More than eight years later, petitioner filed a motion for reconsideration of this  
21 court's order dismissing his petition, which this court denied (ECF Nos. 32, 36). Torres  
22 filed a notice of appeal (ECF No. 37). The Ninth Circuit Court of Appeals denied a  
23 certificate of appealability and stated that no further filings would be entertained in this  
24 closed case (ECF Nos. 39, 41). Apparently undeterred, Torres filed another motion for  
25 reconsideration in this court on March 26, 2019 (42). This motion is denied.

1           As this court has previously explained, Rule 60(b) entitles the moving party to  
2 relief from judgment on several grounds, including the catch-all category “any other  
3 reason justifying relief from the operation of the judgment.” Fed.R.Civ.P. 60(b)(6). A  
4 motion under subsections (b)(4-6) must be brought “within a reasonable time.”  
5 Fed.R.Civ.P. 60(c)(1). Relief under subsection (b)(6) requires a showing of  
6 “extraordinary circumstances.” *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005). Rule  
7 60(b) applies to habeas proceedings, but only in conformity with the Antiterrorism and  
8 Effective Death Penalty Act (AEDPA), including the limits on successive federal  
9 petitions set forth at 28 U.S.C. § 2244(b). *Gonzalez*, 545 U.S. at 529. When a Rule  
10 60(b) motion attacks some defect in the integrity of the federal habeas proceedings and  
11 not the substance of the court’s resolution of a claim on the merits the court should  
12 address it as it would a Rule 60(b) motion raised in any other civil case. *Id.* at 532.  
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14           On the other hand, if a purported motion for reconsideration actually challenges  
15 the resolution of a claim on the merits, then the motion “is in substance a successive  
16 habeas petition and should be treated accordingly.” *Gonzalez*, 545 U.S. at 531. 28  
17 U.S.C. § 2244(3)(A) provides: “[b]efore a second or successive application permitted by  
18 this section is filed in the district court, the applicant shall move in the appropriate court  
19 of appeals for an order authorizing the district court to consider the application.” Where  
20 a petition has been dismissed with prejudice as untimely or because of procedural  
21 default, the dismissal constitutes a disposition on the merits and renders a subsequent  
22 petition second or successive for purposes of 28 U.S.C. § 2244. *McNabb v. Yates*, 576  
23 F.3d 1028, 1029-1030 (9th Cir. 2009); *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9th  
24 Cir. 2005).

1 Torres' current motion for reconsideration is substantially the same document  
2 that he filed here in June 2018 (see ECF Nos. 32, 42). The motion does not assert  
3 some defect in the integrity of the federal habeas proceedings, but again challenges this  
4 court's conclusion that his untimely petition was not entitled to equitable tolling. Torres'  
5 purported motion, therefore, is properly construed as a second or successive habeas  
6 corpus petition. *Henderson v. Lampert*, 396 F.3d 1049, 1053 (9<sup>th</sup> Cir. 2005). As he has  
7 been previously advised, petitioner must obtain authorization from the Ninth Circuit  
8 Court of appeals before he can proceed with a second or successive petition. 28  
9 U.S.C. § 2244(b)(3). Accordingly, the motion is denied.  
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Reasonable jurists would not find this conclusion to be debatable or wrong, and the court will not issue a certificate of appealability.

14           **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (ECF  
15           No. 42) is **DENIED**.

16 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED: This 18<sup>th</sup> day of April, 2019.

  
ROBERT C. JONES  
UNITED STATES DISTRICT JUDGE